

CRIMINAL INTENT AMENDMENTS

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Scott D. McCoy

House Sponsor: Kay L. McIff

LONG TITLE

General Description:

This bill modifies provisions of the Utah Code regarding descriptions of criminal intent.

Highlighted Provisions:

This bill:

- ▶ changes references to "malicious" or "willful" in specified criminal offenses to the terms "intentionally" or "knowingly" in order to appropriately indicate the level of criminal intent that is an element of the offense;
- ▶ deletes offenses involving malicious destruction of real property that are currently addressed in other code sections that contain standard statutory intent language; and
- ▶ makes corresponding cross-reference amendments.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

40-1-11, Utah Code Annotated 1953

41-1a-1309, as renumbered and amended by Chapter 1, Laws of Utah 1992

63-11-65, as enacted by Chapter 305, Laws of Utah 1983

76-2-103, as last amended by Chapter 32, Laws of Utah 1974

76-3-203.3, as last amended by Chapter 184, Laws of Utah 2006

76-3-203.5, as last amended by Chapter 59, Laws of Utah 2005

30 **76-8-420**, as enacted by Chapter 196, Laws of Utah 1973
 31 **76-10-1510**, as enacted by Chapter 72, Laws of Utah 1979
 32 **78-45g-406**, as enacted by Chapter 150, Laws of Utah 2005

33 REPEALS:

34 **76-8-706**, as enacted by Chapter 196, Laws of Utah 1973
 35 **76-8-714**, as enacted by Chapter 196, Laws of Utah 1973
 36 **76-8-715**, as enacted by Chapter 196, Laws of Utah 1973



38 *Be it enacted by the Legislature of the state of Utah:*

39 Section 1. Section **40-1-11** is amended to read:

40 **40-1-11. Interfering with notices, stakes, or monuments -- Penalty.**

41 Any person who [~~willfully or maliciously~~] intentionally or knowingly tears down or
 42 defaces a notice posted on a mining claim, or takes up or destroys any stake or monument
 43 marking [~~any such~~] the claim, or interferes with any person lawfully in possession of [~~such~~] the
 44 claim, or who alters, erases, defaces, or destroys any record kept by a mining district or county
 45 recorder, is guilty of a class B misdemeanor, and shall be punished by a fine of not less than
 46 \$25 nor more than \$100, or by imprisonment for not less than ten days nor more than six
 47 months, or by both [~~such~~] the fine and imprisonment.

48 Section 2. Section **41-1a-1309** is amended to read:

49 **41-1a-1309. Boarding with intent to commit injury to motor vehicle, trailer, or**
50 **semitrailer -- Class C misdemeanor.**

51 It is a class C misdemeanor for a person with intent to commit any [~~malicious~~] criminal
52 mischief, injury, or other crime to:

53 (1) climb into or upon a motor vehicle, trailer, or semitrailer, whether it is in motion or
54 at rest;

55 (2) attempt to manipulate any of the levers, starting mechanism, brakes, or other
56 mechanism or device of a motor vehicle, trailer, or semitrailer while the same is at rest and
57 unattended; or

58 (3) set in motion any motor vehicle, trailer, or semitrailer while the same is at rest and
59 unattended.

60 Section 3. Section **63-11-65** is amended to read:

61 **63-11-65. Heritage trees -- Injury -- Violation of act -- Misdemeanor.**

62 Any person who [~~willfully or maliciously~~] intentionally or knowingly alters, injures,
63 damages, or causes death of a heritage tree or who otherwise violates this act is guilty of a class
64 B misdemeanor.

65 Section 4. Section **76-2-103** is amended to read:

66 **76-2-103. Definitions.**

67 A person engages in conduct:

68 (1) Intentionally, or with intent or willfully with respect to the nature of his conduct or
69 to a result of his conduct, when it is his conscious objective or desire to engage in the conduct
70 or cause the result.

71 (2) Knowingly, or with knowledge, with respect to his conduct or to circumstances
72 surrounding his conduct when he is aware of the nature of his conduct or the existing
73 circumstances. A person acts knowingly, or with knowledge, with respect to a result of his
74 conduct when he is aware that his conduct is reasonably certain to cause the result.

75 (3) Recklessly[~~, or maliciously,~~] with respect to circumstances surrounding his conduct
76 or the result of his conduct when he is aware of but consciously disregards a substantial and
77 unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such
78 a nature and degree that its disregard constitutes a gross deviation from the standard of care that
79 an ordinary person would exercise under all the circumstances as viewed from the actor's
80 standpoint.

81 (4) With criminal negligence or is criminally negligent with respect to circumstances
82 surrounding his conduct or the result of his conduct when he ought to be aware of a substantial
83 and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of
84 [~~such~~] a nature and degree that the failure to perceive it constitutes a gross deviation from the
85 standard of care that an ordinary person would exercise in all the circumstances as viewed from

86 the actor's standpoint.

87 Section 5. Section **76-3-203.3** is amended to read:

88 **76-3-203.3. Penalty for hate crimes -- Civil rights violation.**

89 As used in this section:

90 (1) "Primary offense" means those offenses provided in Subsection (4).

91 (2) (a) A person who commits any primary offense with the intent to intimidate or
92 terrorize another person or with reason to believe that his action would intimidate or terrorize
93 that person is subject to Subsection (2)(b).

94 (b) (i) A class C misdemeanor primary offense is a class B misdemeanor; and

95 (ii) a class B misdemeanor primary offense is a class A misdemeanor.

96 (3) "Intimidate or terrorize" means an act which causes the person to fear for his
97 physical safety or damages the property of that person or another. The act must be
98 accompanied with the intent to cause or has the effect of causing a person to reasonably fear to
99 freely exercise or enjoy any right secured by the Constitution or laws of the state or by the
100 Constitution or laws of the United States.

101 (4) Primary offenses referred to in Subsection (1) are the misdemeanor offenses for:

102 (a) assault and related offenses under Sections 76-5-102, 76-5-102.4, 76-5-106,
103 76-5-107, and 76-5-108;

104 (b) any misdemeanor property destruction offense under Sections 76-6-102[;] and
105 76-6-104, [~~and 76-8-714;~~] and Subsection 76-6-106(2)(b);

106 (c) any criminal trespass offense under Sections 76-6-204 and 76-6-206;

107 (d) any misdemeanor theft offense under Section 76-6-412;

108 (e) any offense of obstructing government operations under Sections 76-8-301,
109 76-8-302, 76-8-304, 76-8-305, 76-8-306, 76-8-307, 76-8-308, and 76-8-313;

110 (f) any offense of interfering or intending to interfere with activities of colleges and
111 universities under Title 76, Chapter 8, Part 7, Colleges and Universities;

112 (g) any misdemeanor offense against public order and decency as defined in Title 76,
113 Chapter 9, Part 1, Breaches of the Peace and Related Offenses;

114 (h) any telephone abuse offense under Title 76, Chapter 9, Part 2, Telephone Abuse;

115 (i) any cruelty to animals offense under Section 76-9-301; and

116 (j) any weapons offense under Section 76-10-506.

117 (5) This section does not affect or limit any individual's constitutional right to the
118 lawful expression of free speech or other recognized rights secured by the Constitution or laws
119 of the state or by the Constitution or laws of the United States.

120 Section 6. Section **76-3-203.5** is amended to read:

121 **76-3-203.5. Habitual violent offender -- Definition -- Procedure -- Penalty.**

122 (1) As used in this section:

123 (a) "Felony" means any violation of a criminal statute of the state, any other state, the
124 United States, or any district, possession, or territory of the United States for which the
125 maximum punishment the offender may be subjected to exceeds one year in prison.

126 (b) "Habitual violent offender" means a person convicted within the state of any violent
127 felony and who on at least two previous occasions has been convicted of a violent felony and
128 committed to either prison in Utah or an equivalent correctional institution of another state or
129 of the United States either at initial sentencing or after revocation of probation.

130 (c) (i) "Violent felony" means any of the following offenses, or any attempt,
131 solicitation, or conspiracy to commit any of these offenses punishable as a felony:

132 (A) aggravated arson, arson, knowingly causing a catastrophe, and criminal mischief,
133 Title 76, Chapter 6, Part 1, Property Destruction;

134 (B) assault by prisoner, Section 76-5-102.5;

135 (C) disarming a police officer, Section 76-5-102.8;

136 (D) aggravated assault, Section 76-5-103;

137 (E) aggravated assault by prisoner, Section 76-5-103.5;

138 (F) mayhem, Section 76-5-105;

139 (G) stalking, Subsection 76-5-106.5(6);

140 (H) terroristic threat, Section 76-5-107;

141 (I) child abuse, Subsections 76-5-109(2)(a) and (b);

- 142 (J) commission of domestic violence in the presence of a child, Section 76-5-109.1;
- 143 (K) abuse or neglect of disabled child, Section 76-5-110;
- 144 (L) abuse, neglect, or exploitation of a vulnerable adult, Section 76-5-111;
- 145 (M) endangerment of child or elder adult, Section 76-5-112.5;
- 146 (N) criminal homicide offenses under Title 76, Chapter 5, Part 2, Criminal Homicide;
- 147 (O) kidnapping, child kidnapping, and aggravated kidnapping under Title 76, Chapter
- 148 5, Part 3, Kidnapping;
- 149 (P) rape, Section 76-5-402;
- 150 (Q) rape of a child, Section 76-5-402.1;
- 151 (R) object rape, Section 76-5-402.2;
- 152 (S) object rape of a child, Section 76-5-402.3;
- 153 (T) forcible sodomy, Section 76-5-403;
- 154 (U) sodomy on a child, Section 76-5-403.1;
- 155 (V) forcible sexual abuse, Section 76-5-404;
- 156 (W) aggravated sexual abuse of a child and sexual abuse of a child, Section
- 157 76-5-404.1;
- 158 (X) aggravated sexual assault, Section 76-5-405;
- 159 (Y) sexual exploitation of a minor, Section 76-5a-3;
- 160 (Z) aggravated burglary and burglary of a dwelling under Title 76, Chapter 6, Part 2,
- 161 Burglary and Criminal Trespass;
- 162 (AA) aggravated robbery and robbery under Title 76, Chapter 6, Part 3, Robbery;
- 163 (BB) theft by extortion under Subsection 76-6-406(2)(a) or (b);
- 164 (CC) tampering with a witness under Subsection 76-8-508(1);
- 165 (DD) retaliation against a witness, victim, or informant under Section 76-8-508.3;
- 166 (EE) tampering with a juror under Subsection 76-8-508.5(2)(c);
- 167 (FF) extortion to dismiss a criminal proceeding under Section 76-8-509 if by any threat
- 168 or by use of force theft by extortion has been committed pursuant to Subsections
- 169 76-6-406(2)(a), (b), and (i);

170 ~~[(GG) damage or destruction of school or institution of higher education property by~~
171 ~~explosives or flammable materials under Section 76-8-715;]~~

172 ~~[(HH)]~~ (GG) possession, use, or removal of explosive, chemical, or incendiary devices
173 under Subsections 76-10-306(3) through (6);

174 ~~[(HH)]~~ (HH) unlawful delivery of explosive, chemical, or incendiary devices under
175 Section 76-10-307;

176 ~~[(JJ)]~~ (II) purchase or possession of a dangerous weapon or handgun by a restricted
177 person under Section 76-10-503;

178 ~~[(KK)]~~ (JJ) unlawful discharge of a firearm under Section 76-10-508;

179 ~~[(LL)]~~ (KK) aggravated exploitation of prostitution under Subsection
180 76-10-1306(1)(a);

181 ~~[(MM)]~~ (LL) bus hijacking under Section 76-10-1504; and

182 ~~[(NN)]~~ (MM) discharging firearms and hurling missiles under Section 76-10-1505; or

183 (ii) any felony violation of a criminal statute of any other state, the United States, or
184 any district, possession, or territory of the United States which would constitute a violent
185 felony as defined in this Subsection (1) if committed in this state.

186 (2) If a person is convicted in this state of a violent felony by plea or by verdict and the
187 trier of fact determines beyond a reasonable doubt that the person is a habitual violent offender
188 under this section, the penalty for a:

189 (a) third degree felony is as if the conviction were for a first degree felony;

190 (b) second degree felony is as if the conviction were for a first degree felony; or

191 (c) first degree felony remains the penalty for a first degree penalty except:

192 (i) the convicted person is not eligible for probation; and

193 (ii) the Board of Pardons and Parole shall consider that the convicted person is a
194 habitual violent offender as an aggravating factor in determining the length of incarceration.

195 (3) (a) The prosecuting attorney, or grand jury if an indictment is returned, shall
196 provide notice in the information or indictment that the defendant is subject to punishment as a
197 habitual violent offender under this section. Notice shall include the case number, court, and

198 date of conviction or commitment of any case relied upon by the prosecution.

199 (b) (i) The defendant shall serve notice in writing upon the prosecutor if the defendant
200 intends to deny that:

201 (A) the defendant is the person who was convicted or committed;

202 (B) the defendant was represented by counsel or had waived counsel; or

203 (C) the defendant's plea was understandingly or voluntarily entered.

204 (ii) The notice of denial shall be served not later than five days prior to trial and shall
205 state in detail the defendant's contention regarding the previous conviction and commitment.

206 (4) (a) If the defendant enters a denial under Subsection (3)(b) and if the case is tried to
207 a jury, the jury may not be told until after it returns its verdict on the underlying felony charge,
208 of the:

209 (i) defendant's previous convictions for violent felonies, except as otherwise provided
210 in the Utah Rules of Evidence; or

211 (ii) allegation against the defendant of being a habitual violent offender.

212 (b) If the jury's verdict is guilty, the defendant shall be tried regarding the allegation of
213 being an habitual violent offender by the same jury, if practicable, unless the defendant waives
214 the jury, in which case the allegation shall be tried immediately to the court.

215 (c) (i) Prior to or at the time of sentencing the trier of fact shall determine if this section
216 applies.

217 (ii) The trier of fact shall consider any evidence presented at trial and the prosecution
218 and the defendant shall be afforded an opportunity to present any necessary additional
219 evidence.

220 (iii) Prior to sentencing under this section, the trier of fact shall determine whether this
221 section is applicable beyond a reasonable doubt.

222 (d) If any previous conviction and commitment is based upon a plea of guilty or no
223 contest, there is a rebuttable presumption that the conviction and commitment were regular and
224 lawful in all respects if the conviction and commitment occurred after January 1, 1970. If the
225 conviction and commitment occurred prior to January 1, 1970, the burden is on the prosecution

226 to establish by a preponderance of the evidence that the defendant was then represented by
227 counsel or had lawfully waived his right to have counsel present, and that his plea was
228 understandingly and voluntarily entered.

229 (e) If the trier of fact finds this section applicable, the court shall enter that specific
230 finding on the record and shall indicate in the order of judgment and commitment that the
231 defendant has been found by the trier of fact to be a habitual violent offender and is sentenced
232 under this section.

233 (5) (a) The sentencing enhancement provisions of Sections 76-3-407 and 76-3-408
234 apply to a felony conviction defined in Title 76, Chapter 5, Part 4, Sexual Offenses, and
235 supersede the provisions of this section.

236 (b) Notwithstanding Subsection (5)(a):

237 (i) the convictions under Sections 76-5-404 and 76-5a-3 are governed by the
238 enhancement provisions of this section; and

239 (ii) the "violent felony" offense defined in Subsection (1)(c) shall include any felony
240 sexual offense violation of Title 76, Chapter 5, Part 4, Sexual Offenses, to determine if the
241 convicted person is a habitual violent offender.

242 Section 7. Section **76-8-420** is amended to read:

243 **76-8-420. Removing or damaging road signs.**

244 Every person who [~~maliciously~~] intentionally or knowingly removes or injures any
245 milepost or milestone or guidepost or any inscription on them, erected upon any highway, is
246 guilty of a class B misdemeanor.

247 Section 8. Section **76-10-1510** is amended to read:

248 **76-10-1510. Obstructing operation of bus -- Conspiracy.**

249 Two or more persons who willfully [~~or maliciously~~] combine or conspire to violate
250 Section 76-10-1509 shall each be guilty of a class C misdemeanor.

251 Section 9. Section **78-45g-406** is amended to read:

252 **78-45g-406. Penalty for releasing information.**

253 A person who, [~~with malicious intent,~~] intentionally or knowingly releases confidential

254 information from the Office of Vital Records which is filed pursuant to Section 78-45g-401 to
255 a person or agency not authorized to receive the information under Section 78-45g-405 is guilty
256 of a class B misdemeanor.

257 Section 10. **Repealer.**

258 This bill repeals:

259 Section **76-8-706, Injury or destruction of property.**

260 Section **76-8-714, Injury or destruction of property of school or person.**

261 Section **76-8-715, Damage or destruction of property by explosives or flammable**
262 **materials.**